

**Patent Law
of the Republic of Kazakhstan**

Chapter 1. General provisions

Article 1. Basic notions and definitions used in the present Law

The following notions and definitions are used for the purposes of this Law:

- 1) objects of intellectual property – the results of intellectual effort and means of individualization of participants of the civil turnover, goods, works and services;
- 2) objects of industrial property – inventions, utility models and industrial designs;
- 3) protective documents – preliminary patents and patents for inventions and industrial designs and patents for utility models granted pursuant to the present Law;
- 4) conditions of patentability – the conditions of granting legal protection to objects of industrial property, stipulated by the present Law;
- 5) Paris Convention – Paris Convention on protection of industrial property of March 20, 1883, with further changes and supplements;
- 6) patent owner – the owner of a protective document;
- 7) exclusive right – the economic right of a patent owner to use an object of industrial property pursuant to legislative acts;
- 8) Kazpatent – republican service agency on industrial property matters ;
- 9) work invention – objects of industrial property created by the employee in the course of execution of his work duties or a certain task of the employer;
- 10) patent agents – citizens, to whom the right to represent natural persons and legal entities before Kazpatent is granted pursuant to the legislation;
- 11) bulletin – official periodicals of Kazpatent on issues of industrial property objects protection;
- 12) patented objects of industrial property – objects of industrial property for which the protective documents are issued;
- 13) licensing agreement – the agreement under which the patent owner (licenser) provides the other party (licensee) with the right to use an object of industrial property temporarily and in a certain way;
- 14) legally important actions – the actions of Kazpatent stipulated by this Law, including the receipt of applications to grant protective documents, their registration, examination of industrial property objects, issue of protective documents and other actions that entail rights and liabilities to their participants;

15) appellate council – subdivision of Kazpatent on prior-to-court review of disputes;

Article 2. Relations regulated by this Law

The present Law shall regulate economic as well as related to them non-economic relations arising due to the creation, legal protection and use of industrial property objects;

The protection of other objects of industrial property (breeding achievements, integrated circuits topographies, trademarks, service marks, appellations of origin of goods and others) shall be regulated by a special legislation.

Article 3. Patent Law and international agreements

1. The provisions of the present Law shall extend to objects of industrial property, protective documents for which are granted by Kazpatent as well as objects of industrial property for which patents are issued on the basis of international agreements to which the Republic of Kazakhstan is a party.

2. If an international agreement ratified by the Republic of Kazakhstan establishes other rules than the rules of the present Law, the rules of such international agreement shall supersede.

Article 4. State regulation in the area of industrial property objects protection

1. The state regulation in the area of industrial property objects protection shall be provided by the state authorized body (hereafter – the authorized body) and Kazpatent.

2. The authorized body shall enforce the state policy in the area of protection of industrial property objects, manage the single patent system of the Republic of Kazakhstan, adopt sub-normative legislative acts in this area as well as perform other functions pursuant to the legislation.

3. In accordance with the present Law, Kazpatent shall ensure the state monopoly in the area of industrial property objects protection, accept for review applications for objects of industrial property, conduct their examination, grant protective documents, publish in the bulletin the information on industrial property objects, carry out other functions of the national patent agency.

Article 5. Legal protection of objects of industrial property

1. The right in an invention and industrial design is attested by a preliminary patent and a patent and in an utility model - by a patent.

2. The preliminary patent for an invention and industrial design, the patent for a utility model shall be granted after the formal examination of the application. .

The patent for an invention and industrial design shall be granted after the examination of the application on the essence is carried out.

The preliminary patent and patent shall certify the priority, authorship and the exclusive right in an object of industrial property.

3. The preliminary patent for an invention shall be effective during five years from the date of filing the application to Kazpatent with the possible extension of the term of its effectiveness by Kazpatent upon the request of the patent owner, but not more than for three years.

The patent for an invention shall be effective within the term not more than twenty years from the date of submission of the application to Kazpatent.

The effective term of the patent for an invention for the use of which the permission of the competent body is required, pursuant to the legislation, may be extended by Kazpatent upon the request of the patent owner but not more than for five years.

The patent for a utility model shall be effective for five years from the date of submission of an application to Kazpatent with the possibility to extend its duration by Kazpatent upon the request of the patent owner, but not more than for three years.

The preliminary patent for an industrial design shall be effective during five years from the date of filing of an application to Kazpatent.

The patent for an industrial design shall be valid for ten years from the date of submission of the application to Kazpatent with the possibility to extend its duration by Kazpatent upon the request of the patent owner, but not more than for five years

4. The scope of legal protection provided by a protective document for an invention and utility model shall be defined by their formula and by the protective document for an industrial design – by the aggregate of its essential features represented on the depiction of the article (model). Descriptions and drawings may be used for interpretation of the formula of an invention.

The duration of a protective document granted for the method of production of a product shall extend to the product directly obtained by this method.

And a new product shall be considered as obtained by the protected method, unless proved otherwise

5. The right to get a protective document, the rights arising from registration of the application, the right to own a protective document and the rights proceeding from the protective document may be transferred to the other person in full or in part.

6. The legal protection shall not be granted to objects of industrial property which are considered state secrets pursuant to the present Law. The order of handling secret objects of industrial property shall be regulated by the special legislation.

Chapter 2. Conditions of patentability of industrial property objects

Article 6. Conditions of patentability of invention

1. The legal protection shall be granted to an invention if it is novel, has inventive level and industrially applicable.

The invention shall be deemed new, if it is not known from the prior art.

The invention has an inventive level, if for a specialist it does not evidently follow from the prior art.

The prior art shall include any information that becomes public in the world prior to the priority date of an invention.

In the course of establishing the novelty of an invention, the information on the prior art shall also include applications for inventions and utility models (except for the revoked) filed in the Republic of Kazakhstan under the condition of their earlier priority as well as inventions and utility models patented in the Republic of Kazakhstan. .

The invention is deemed industrially applicable, if it can be used in industry, agriculture, public health care and other fields of activity.

2. A device, method, matter/substance, string of microorganism, cells of plants and animals as well as their application shall be deemed objects of invention.

3. The following shall not be deemed as inventions:

- 1) discoveries, scientific theories and methods of mathematics;
- 2) methods of organization and economic management;
- 3) relative designations, schedules and rules;
- 4) rules and methods of execution of mental operations;
- 5) computer programs and algorithms as such;
- 6) projects and layout schemes of constructions, buildings and territories;
- 7) suggestions related only to the outward appearance of an article;
- 8) suggestions contradicting the public interests, principals of humanity and moral.

4. The following shall not be considered as a circumstance influencing the patentability of an invention: public disclosure of information related to an invention by the applicant (author) or any person who has received this information from his/her directly or indirectly, including demonstration of such invention as an exhibit at an official or officially recognized international exhibition organized in the territory of the member-state of the Paris Convention, under the condition that the application for such an invention has been filed not later than six months from the date of its disclosure or placement at the exhibition. Under this condition the applicant is liable to prove this fact.

Article 7. Conditions of patentability of utility model

1. The constructive execution of means of production, consumable articles as well as composite parts (device) shall be related to a utility model.

The legal protection is granted to a utility model, if it is novel and applicable in industry.

A utility model shall be deemed new, if the totality of its essential features is not known from the prior art.

The information from the prior art shall embrace knowledge, which has become generally available from the priority date of a utility model regarding the means of a similar purpose as the claimed utility model, including the data concerning their use in the Republic of Kazakhstan as well as applications for utility models and inventions (except recalled) submitted by other persons in the Republic of Kazakhstan as well as utility models and inventions patented in the Republic of Kazakhstan for a similar purpose under the condition of their earlier priority.

A utility model is industrially applicable, if it can be practically used.

2. The public disclosure of the information related to a utility model made by the applicant (author) or any other person who obtained from him directly or indirectly, such information, including demonstration of such a utility model as an exhibit at an official or officially recognized international exhibition organized in the territory of the member state of the Paris Convention, under the condition that application for the utility model is filed not later than the six months from the date of its disclosure or display at the exhibition shall not be deemed a circumstance influencing on the novelty of a utility model. Under this condition the applicant is responsible to prove this fact.

3. Solutions related to the objects indicated in paragraph 3 Article 6 of the present Law are not protected as utility models.

Article 8. Conditions of patentability of industrial design

1. The artistic-constructive solution determining the outward appearance of an article shall be related to an industrial design. The legal protection shall be granted to an industrial design if it is new, original and industrially applicable.

An industrial design shall be deemed novel, if the totality of its essential features presented in the drawings of an industrial design and on the list of its essential features is not known from the information available in the world prior to the priority date of such an industrial design.

While establishing the novelty of an industrial design, applications for industrial designs under the condition of their earlier priority filed in the Republic of Kazakhstan (except for the revoked) and industrial designs patented in the Republic of Kazakhstan shall be taken into account.

An industrial design shall be deemed original, if its essential features determine the creative nature of peculiarities of the article.

An industrial design shall be deemed industrially applicable, if it can be repeatedly reproduced by way of production of the article in question.

2. The following solutions are not recognized as industrial designs:

- 1) conditioned exclusively by a technical function of articles;
- 2) objects of architecture (except for small architectural forms), industrial hydro technological and other stationary constructions;
- 3) printed products per se;
- 4) objects of unstable form: liquid, gas, friable or similar substances;
- 5) articles contradicting the public interests, principles of humanity and moral.

3. The public disclosure of the information related to an industrial design made by the applicant (author) or any other person who obtained such information from him/her, including demonstration of an industrial design as an exhibit at an official or officially recognized international exhibition organized in the territory of the member-state of the Paris Convention under the condition that the application for an industrial design has been filed not later than six months from the date of its disclosure or display at the exhibition shall not be deemed as a circumstance influencing the patentability of an industrial design. Under this condition the applicant is responsible to prove this fact.

Chapter 3. Authors and patent owners

Article 9. Author of object of industrial property

1. A natural person, by whose creative effort an object of industrial property has been made, shall be deemed the author.

2. In the event that several natural persons took part in the creation of an object of industrial property, all of them shall be recognized as authors (co-authors). The order of using the rights that belong to co-authors shall be determined in the agreement between them.

A natural person who has not made his personal creative contribution to the creation of an industrial property object but who has provided only technical, organizational or material assistance to the author or promoted the registration of the rights in it and its use shall not be considered the author

3. Right of authorship shall be inalienable personal right and shall be permanently protected.

4. The author has the right to assign his name or special designation to the object of industrial property unless the rights of third persons in trademarks protected in the Republic of Kazakhstan are not infringed upon.

Article 10. Patent owner

1. The protective document shall be granted to:

- 1) the author (authors) of an object of industrial property;
- 2) the employer, in the cases stipulated in paragraph 2 of the present Article;
- 3) their legal successor (successors) including person (persons) who have obtained the concerned right in the assignment order;
- 4) jointly to persons, stipulated by the present paragraph , provided there is a mutual consent between them.

2. The rights in protective documents for work inventions shall belong to the employer, unless otherwise stipulated in the agreement between him and the employee.

3. If the employer fails to submit an application to Kazpatent within four months from the date of notification about a created object of industrial property made by the author, does not reassign the right to file an application to other person and does not inform the author to keep the appropriate object in secret, then the right to receive protective document is transferred to the author. In this case the employer shall have the preemptive right to use the concerned object of industrial property in his own production upon the agreement with the patent owner

1. The amount, conditions and the order of payment of a remuneration to the author for a work invention shall be determined in the agreement between him and the employer. In the event the agreement is not reached the court shall make a decision. If it is impossible to measure the contributions of the author and the employer in the creation of the work invention, the author shall have the right to half of the benefit that is received or should have receive by the employer.

Chapter 4. Exclusive right to use object of industrial property

Article 11. Exclusive right and obligations of patent owner

1. The patent owner shall have the exclusive right to use the protected object of industrial property at his discretion.

2. Production , application, import, offer for sale, sale, other introduction into the civil turnover or storage of a product which contains a protected object of industrial property for the same purpose, as well as application of the protected method shall be recognized as the use of an industrial property object.

The product shall be deemed as containing a protected invention or utility model, and a protected method shall be recognized as applied, if the product contains or the method uses every feature of such invention, utility model listed in the independent item of the formula or the feature equivalent to

the feature concerned and known as such in the field of technology on the date of the beginning of its use.

The introduction into the civil turnover or storage of a product for the same purpose that was produced directly by this method shall be recognized as use of a protected method to obtain a product. The product shall be deemed as containing industrial design if it has all the essential features presented on the drawings of an article (model) and contained in the list of its essential features.

3. The patent owner is obligated to use the object of industrial property.

In the event the protective document to an object of industrial property belongs to several persons, the relations to use it shall be determined in the agreement between them. In the absence of such an agreement each of them may use the protected object at his own discretion but has no right to provide a license for it or assign the protective document to other person without the consent of the other patent owners.

The patent owner may use warning marking indicating that the used object of industrial property is patented.

4. In the event of non-use or insufficient use of an invention by the patent owner or refusal to conclude licensing agreement on the acceptable commercial conditions, any person has the right to apply to court with the application in order to grant him a compulsory non-exclusive license, if the invention has not been continuously used after the first publication of the information on the issue of the protective document for such invention during for any four years preceding the date of submission of such an application. In the event the patent owner fails to prove that non-use or insufficient use is caused by excusable reasons, the court shall provide the license with determination of the limits of the use, terms, amounts and the order of payments. The amount of payments must be established not less than the price of the license determined pursuant to the established practice.

Any compulsory license shall be granted predominantly for the supply of the domestic market of the Republic of Kazakhstan.

The right to use the stated invention may be transferred by a person, to whom the compulsory license is granted, to other person, only together with the appropriate production based on which the objects is used.

The compulsory license shall be subject to cancellation by court in the event of termination of the circumstances which led to its issuance. . Under this condition, the person who has obtained a compulsory license earlier shall have the preemptive right to conclude the licensing agreement with the patent owner.

5. The patent owner who cannot use an object of industrial property, without infringing upon the rights of the owner of other protective document for another object of industrial property and who has refused to conclude a licensing agreement on acceptable commercial terms shall have the right to

apply to court with the request to provide him with a compulsory non-exclusive license to use the object of industrial property in the territory of Republic of Kazakhstan.

In the event the compulsory license is granted, the court shall set the limits of use of the object of industrial property, the protective document for which belongs to other person, terms, amount and the order of payment. In this event, the amount of payments shall be established not less than the price of a license that is determined pursuant to the established practice.

The right to use an object of industrial property obtained on the basis of the present paragraph may be transferred only when the protective document for such an object of industrial property, under which the right is granted, is re-assigned.

6. The patent owner may assign the obtained protective document to any natural person or legal person. The assignment agreement shall be subject to mandatory registration at Kazpatent.

7. The protective document for an object of industrial property and (or) the right to obtain it shall be inherited or transferred in the order of succession.

8. The patent owner shall ensure annual payment in order to maintain the protective document in effect.

Article 12. Actions non- recognized as infringement upon exclusive right of patent owner.

The following shall not be recognized as a violation of the exclusive right of a patent owner:

1) the application of means that incorporate protected objects of industrial property in construction or in the course of exploitation of transportation means (sea, river, air, ground and cosmic) of other countries under the condition that the indicated means are temporarily or accidentally located on the territory of the Republic of Kazakhstan and used for the needs of particular transportation means. Such actions shall not be deemed violation of the exclusive right of a patent owner in the event, if the transportation means belong to natural persons or legal persons of the countries which provide the same rights to the transportation means of the owners of the Republic of Kazakhstan.

2) the execution of scientific research or experiment of a mean incorporating a protected object of industrial property;

3) the application of this kind of means in extraordinary circumstances (natural calamities, catastrophes, big-scale accidents) with immediate notification of a patent owner and subsequent payment of commensurate compensation to the patent owner;

4) the application of such means for personal purposes without getting income;

5) one-time preparation of medicine in a drug store due to the prescription of a doctor in extraordinary cases;

6) the application of means incorporating protected objects of industrial property if these means are introduced into the civil turnover of the Republic of Kazakhstan in a lawful way.

Article 13. Right of prior use and temporary legal protection

1. Any person who has created prior to the priority date of an industrial property object and irrespective of its author and used a solution similar to the object of industrial property in the territory of Republic of Kazakhstan or has made the preparations necessary for it, , retains the right to its further free use without extension of the scope (the right of prior use).

The right of prior use may be transferred to other person only together with the production where an identical solution was applied or the necessary preparations were made therefor.

2. A person who has started using an object of industrial property after the priority date but prior to the publication of the information on the issue of a preliminary patent for an invention, an industrial design or a patent for a utility model shall be obligated to terminate its further use upon the request of a patent owner. However, this person shall not be obligated to reimburse losses to the patent owner that he bears in the result of this use.

3. The temporary protection shall be granted to an object of industrial property placed as an exhibit at an official or officially recognized international exhibition from the date of its placement at the exhibition to the date of the first publication of the information on the issue of a protective document under the condition that the application for this object was filed to Kazpatent not later than six months from the date of its placement at the exhibition.

4. The person using an object of industrial property during the period indicated in paragraph 3 of the present Article, shall pay monetary compensation to the patent owner after the protective document is granted. The amount of compensation shall be determined by the agreement between the parties

Article 14. Granting right to use object of industrial property

1. Any person who is not a patent owner has the right to use a protected object of industrial property only with the permission of a patent owner on the bases of a licensing agreement.

2. The licensing agreement may stipulate the provision of the licensee with:

1) the right to use an object of industrial property with the licensor retaining the possibility to use it and the right to grant a license to other persons (simple, non-exclusive license);

2) the rights to use an industrial property object with the licensor retaining the possibility to use the object , but without the right to grant the license to other persons (exclusive license);

3) the right to use an object of industrial property without the licensor's retaining the possibility to use it and without the right to grant the license to other persons (full license);

In the event the type of the license is not stipulated in the licensing agreement, it shall be presumed to be simple non-exclusive.

3. The agreement to grant a non-exclusive license by the licensee to other person (sub-licensee) for the right to use an industrial property object (sub-licensing agreement) may be concluded only in cases stipulated in the licensing agreement.

The licensee shall be liable in front of the licensor for the actions of a sub-licensee, unless the licensing agreement stipulates otherwise.

4. The licensing agreement shall be subject to registration at Kazpatent.

5. The patent owner may submit an application to Kazpatent on granting to any person the right to obtain a license (open license).

A person wishing to obtain the indicated license shall conclude an agreement with the patent owner on the procedure of using an industrial property object under the conditions pursuant to the established practice with the obligatory registration of it at Kazpatent. Disputes on the terms of the agreement shall be reviewed by court.

The application of a patent owner on granting the right to an open license shall be effective within three years from the date of publication of the information on the open license. The maintenance fee for the protective document shall be reduced by 50% within the limits of the indicated term following the year of publication of the information on the open license.

6. The government of the Republic of Kazakhstan has the right to allow the use of an industrial property object in the interests of national security without the consent of a patent owner and with the payment of a commensurate compensation. Disputes on the amount of compensation shall be settled by court.

Article 15. Infringement upon protective document

1. Any person using a protected object of industrial property in breach of the present Law, shall be deemed an infringer upon the exclusive right of a patent owner.

Unauthorized manufacture, application, import, storage, offer for sale, sale and other introduction of a product which is created due to the use of a protected object of industrial property into the civil turnover as well as the application of a protected method or introduction of a product, which is manufactured directly by a protected method, into the civil turnover shall be deemed infringement upon the exclusive right of a patent owner. Under this condition a new product shall be deemed as obtained by a protected method, unless proved otherwise.

2. The patent owner has the right to demand:

- 1) the termination of the violation of a protective document;
- 2) the reimbursement of the losses caused and compensation of the moral harm by the infringer;
- 3) the recovery of income obtained by the infringer of a protective document instead of the reimbursement of losses;

4) the payment of a compensation by the infringer of a protective document in the amount from ten to fifty thousands of calculation indices established by the law. The amount of compensation shall be established by the court instead of the reimbursement of losses and recovery of income.

5) the seizure of the goods to ones own benefit that are introduced in to a civil turnover or the products stored for the same purpose which are recognized as infringing upon the protective document as well as the means that are specially destined for the violation of a protective document;

6) the obligatory publication of the information on the infringement made, including the information on the owner whose right is violated.

3. The claims to the infringer of a protective document may also be declared by a licensee if this is stipulated in the licensing agreement.

Chapter 5. Receipt of protective document

Article 16. Submission of application for granting of protective document

1. The application for granting a protective document shall be submitted to Kazpatent by a person who has the right to a protective document (henceforth: the applicant) pursuant to paragraph 1 of Article 10 of the present Law.

2. The application for granting of a protective document shall be presented in the official or Russian language. Other documents of the application shall be provided in the official, Russian or other languages. In the event the other documents of the application are provided in other language, the translation into the state or Russian language shall be attached to the application. The translation shall be provided by the applicant within two months after the receipt of the application by Kazpatent. Under the condition the appropriate payments are made, this period can be extended, but not more than for two months.

In the event the translation is not provided within the established term, the application shall be deemed as non-filed. .

Article 17. Application for issuing of protective document for invention

1. The application for the issue of a protective document for an invention (henceforth: the application for an invention) shall relate to one invention or group of inventions interrelated to the extent that they constitute a single creative idea (the requirement of the unity of an invention).

2. The application for an invention shall contain:

- 1) the application on granting of a protective document indicating the authors or invention or persons in whose name the protective document is requested as well as the address of their residence or location;
- 2) the description of an invention exposing it in full, necessary to be made by a specialist in the relative art; ;
- 3) the formula of such invention expressing its essence and fully based on description
- 4) drawings and other materials if they are necessary for understanding the essence of such invention;
- 5) an essay;
- 6) a proxy, in the event the clerical work is conducted through a representative;
- 7) a petition stipulated by paragraph 7 of Article 22 of the present Law, in the request of a patent for an invention.

The document proving the payment of an application fee as well as the document attesting the reduction in its amount shall be enclosed to the application for an invention or shall be submitted within two months from the date of receipt of an application. Under the condition of an appropriate payment the term may be extended but not more than for two months.

In the event the documents confirming the payment are not provided in the established term, the application shall be deemed not have been filed.

3. The date of file of an application shall be established on the date of receipt of an application by Kazpatent that contains an application to issue a protective document for an invention with the indication of the surname, name, patronymic name (if there is any) or full denomination of the applicant, description, formula and drawings if there is a reference in the description, in the event the indicated documents are not provided simultaneously, then it shall be established from the date of the receipt of the last document listed thereof.

4. Other requirements to the documents of the application for an invention shall be established by Kazpatent.

Article 18. Application for granting of protective document for utility model

1. The application for granting of a protective document for an utility model (henceforth: the application for an utility model) shall relate only to one utility model or a group of utility models interrelated to the extent that they constitute a single creative idea (the requirement of the unity of a utility model).

2. The application for utility model shall contain:

- 1) the application on granting of a protective document with indication the authors of the utility model and the persons for whose name the protective document is requested as well as their place of residence or location;

- 2) a description of a utility model disclosing it in full in order to realize;
- 3) the formula of a utility model depicting its essence, fully based on the description;
- 4) drawings ;
- 5) an essay;
- 6) a proxy, in the event the clerical work is conducted through a representative;

The document proving the payment of an application fee in the established amount as well as the document spelling out the reasons for a reduction in its amount shall be enclosed to the application for or be submitted within two months from the date of receipt of an application. Under the condition of an appropriate payment, the term may be extended but not more than for two months.

In the event the documents proving the payment are not provided in the established term, the application shall be deemed not have been filed. .

3. The date of file of an application for a utility model shall be established by the date of receipt of an application by Kazpatent that contains an application to issue a protective document for a utility model with the indication of the surname, name, patronymic name (if there is any) or full denomination of an applicant, description, formula and draughts, in the event the indicated documents are not provided simultaneously, then the date of file of an application for a utility model shall be established by the date of the receipt of the last document listed thereof.

4. Other requirements to the application documents for a utility model shall be established by Kazpatent.

Article 19. Application for grant of protective document for industrial design

1. The application for the grant of a protective document for an industrial design (henceforth: the application for an industrial design) must relate only to one industrial design or to a group of industrial designs interrelated to the extent that they meet the requirement of the unity of an industrial design.

2. The application for an industrial design must contain:

- 1) the application to grant a protective document indicating the authors of the industrial design and persons for whose name the protective document is requested as well as their place of residence or location;
- 2) a set of drawings of the article (articles) suitable for its reproduction or a model providing detailed presentation on the claimed design (designs);
- 3) drawings of the general appearance of an article, ergonomic scheme, confection map, if necessary, to disclose the essence of an industrial design;
- 4) a description of an industrial design including the list of its essential features;
- 5) a proxy, in the event the clerical work is conducted through a representative;

The document proving the payment of an application fee in the established amount as well as the document spelling out the reasons for a reduction in its amount shall be enclosed together to the application for an industrial design or be submitted within two months from the date of receipt of an application. Under the condition of an appropriate payment the term may be extended but not more than for two months.

In the event the documents proving the payment are not provided in the established term, the application shall be deemed not filed.

3. The date of file of an application for an industrial design shall be established by the date of receipt of an application by Kazpatent that contains an application to issue a protective document for an industrial design with the indication of the surname, name, patronymic name (if there is any) or full denomination of the applicant, description, depiction of an article (model), in the event the indicated documents are not provided simultaneously, then -by the date of the receipt of the last document listed thereof.

4. Other requirements to the documents of an application for industrial design shall be established by Kazpatent.

Article 20. Priority of object of industrial property

1. The priority of an object of industrial property is established by the date of filing of an application for a concerned object of industrial property, formalized pursuant to paragraph 3 of Article 17, paragraph 3 of Article 18, paragraph 3 of Article 19 of the present Law.

2. The priority may be established by the date of filing the first application in a member-state of the Paris Convention as well as in international or regional organizations stipulated in it (convention priority), if an application for an invention, utility model is submitted to Kazpatent - within twelve months and the application for an industrial design - within six months from the indicated date. In the event that due to the circumstances, which were beyond the control of the applicant, the application for the convention priority could not be filed within the appropriate time, the time limit may be extended but not longer than for two months.

The applicant willing to use the right of convention priority must indicate this when filing the application or within two months from the date of filling an application to Kazpatent and attach the copy of the first application or submit it not later than a period of six months from the date of file of an application to Kazpatent. In the event the document is not provided, the applicant shall lose his right to convention priority. In this case the priority shall be established on the date of filing the application to Kazpatent.

3. The priority may be established on the date of receipt of supplementary materials if they are formalized by the applicant as a separate application filed prior to the expiration of three months

from the date of Kazpatent's notification on the fact that it was impossible to take into account additional materials provided that they change the essence of the decision applied was sent to the applicant.

4. The priority may be established on the date of filing of an earlier application of the same applicant to Kazpatent disclosing the object of industrial property, if the application on which such priority is requested was filed not later than 12 months as of the date of filing of an earlier application for an invention and six months of an earlier application for a utility model and industrial design. Under these conditions, the earlier application shall be considered recalled.

The priority can not be established by the date of filing the application on which an earlier priority has been claimed.

5. The priority of an object of industrial property on marked application shall be established by the date of filing to Kazpatent by the same applicant an initial application disclosing its essence, and in the event there is a right to establish an earlier priority on the initial application - by the date of its priority, if the marked application was filed prior to the decision on refusal to grant a protective document on the initial application was made and it can not be appealed, and in the event the decision to grant a protective document is made on indicated application - prior to the date registration of an industrial property object in the State Registry of the Republic of Kazakhstan.

6. The priority may be established on the basis of several applications submitted earlier or their supplementary materials, provided the requirements set forth in paragraphs 2-5 of this Article are met.

7. If it is established that similar objects of industrial property have one and the same priority date, the protective document shall be granted on the application which has an earlier date of sending to Kazpatent, and in the event the dates coincide - on the application with an earlier registration number of Kazpatent.

Article 21. Corrections to documents of application upon initiative of applicant

1. The applicant shall have the right to introduce amendments and corrections to the documents of the application without changing the essence of the object of industrial property, within two months from the date of the receipt of the application.

2. Such amendments and corrections on the applications may be provided even after the expiration of the term indicated in paragraph 1 of this Article, under the condition of an appropriate payment prior to the date the decision on the application for an industrial property object is made.

Article 22. Examination of application for invention

1. Kazpatent shall conduct formal examination of an application after the expiration of two months from the date of the receipt of the application. The formal examination may be conducted prior to the expiration of this term, upon a written request of the applicant. In this case the applicant shall no longer have the right stipulated in paragraph 1 of Article 21 of this Law from the moment the request is filed.

In the course of formal examination of an application for an invention, the presence of all required documents and execution of all established requirements to them shall be checked, the date of filing of the application shall be established and the possibility to refer the claimed proposal to objects protected as inventions as well as the unity of an invention shall be checked. The examination of the claimed invention for compliance with the conditions of patentability stipulated in paragraph 1 of Article 6 of this Law shall not be conducted. A preliminary patent is granted for the risk and liability of the applicant.

2. If the applicant provides additional materials pursuant to Article 21 of the present Law, in the course of examination they shall be checked on whether they change the essence of the invention claimed.

Additional materials shall be deemed as changing the essence of the invention claimed if they contain features that should be included into the formula of an invention and was not included into the initial materials of the application. Additional materials in the part that changes the essence of an invention shall not be taken into account while considering an application and may be registered by the applicant as a separate application, about which the applicant shall be notified.

3. In the event the application is filed in violation of the requirements on registration, the request shall be sent to the applicant to present amended or missing documents within three months from the date the request is sent.

In the event the applicant fails to provide the indicated documents during the established term or the request on extension of the established term, the application shall be considered as recalled.

4. In the event the application filed in violation of the requirement of unity, the applicant shall be suggested to inform which of the inventions shall be considered and introduce clarifications to the documents of an application, if necessary, within three months from the date the notification is sent. Other materials of the initial application may be registered as separate applications. The priority of marked applications shall be established in accordance with paragraph 5 of Article 20 of the present Law.

In the event the applicant fails to inform which of the inventions shall be considered and fails to provide clarifying documents, within three months from the date of sending the notification on violation of the requirements of unity, the first object indicated in the formula as well as other inventions interrelated with the first in such a way that they meet the requirements of unity of an invention shall be considered.

5. If in the result of formal examination it is established that the application is related to objects protected as inventions and the documents comply with the established requirements, the decision to grant a preliminary patent shall be made with the formula agreed with the applicant.

The applicant shall present to Kazpatent a document proving an appropriate payment within three months from the date the decision to issue a preliminary patent is forwarded to the applicant. In the event the indicated document is not provided the application shall be considered as recalled and registration of the invention as well as granting of a preliminary patent shall not be carried out.

6. If in the result of a formal examination it is established that the application is related to subject matter that is not protected as inventions, the decision on refusal to grant a preliminary patent shall be made. The decision on refusal to grant a preliminary patent shall be also made if the applicant does not change the formula of an invention after he was notified that the suggested formula contains features which were absent in the initial materials of the application or besides of an object protected as an invention it also characterizes the proposal which is not related to objects protected as an invention or which was not considered due to violation of the requirement on the unity of an invention.

The applicant may file to Kazpatent an objection to the decision on refusal to grant a preliminary patent, within three months from the date it was sent. The Appellate Council must consider an objection within two months from the date of its receipt.

7. Upon the request of the patent owner or third parties that is filed after the publication of the information to grant a preliminary patent, but not later than three years from the date of filing of an application or five years from the date of filing of an application, in the event the effective term of a preliminary patent is extended, Kazpatent shall conduct the examination of the application on essence, pursuant to paragraph 3 of Article 5 of the present Law. The examination of an application on essence shall include information research with respect to the claimed invention in order to determine the level of technology, compliance of the claimed decision with the conditions of patentability established by Article 6 of this Law and shall be carried out under the condition the document proving the payment for the examination on essence and the validity of a preliminary patent is provided. In the event the applicant, without valid reasons, fails to provide the request for examination within the established term, the legal protection of an invention shall be terminated due to the expiration of validity term of a preliminary patent.

8. In the course of the examination on essence, Kazpatent shall have the right to request additional materials from the applicant, including changed formula of the invention, without which it is impossible to conduct an examination.

Upon the request of the examination the additional materials shall be provided within three months from the date the request was sent, without changing the essence of the invention.

The order established in paragraph 2 of this Article shall be applied to additional materials in part which changes the essence of the invention. In the event the applicant fails to provide requested materials or the request to extend the established term within the established term the application shall be considered as recalled.

9. If in the result of examination of the application on essence, Kazpatent establishes that the claimed proposal, within the scope of protection requested by the applicant, complies with the requirement of patentability of invention, set forth in Article 6 of the present Law, the decision to issue a patent with the formula of invention agreed with the applicant shall be made.

The applicant shall provide Kazpatent with the document proving the payment, within three months from the date the decision to grant a patent was sent to the applicant. In the event the indicated document is not provided the application shall be considered as recalled one and the registration of the invention as well as issuance of a patent shall not be conducted.

10. In the event it is established that the invention claimed, within the scope of legal protection requested by an applicant, does not comply with the requirement of patentability of an invention, the decision on the refusal to grant a patent shall be made.

The refusal to grant a patent shall also be made in cases stipulated in paragraph 6 of the present Article.

The applicant may file with Kazpatent an objection to the decision on refusal to grant a patent, within three months from the date the decision is made. The Appellate Council shall consider such objection within four months from the date of its receipt.

11. At any stage of consideration of an application, the applicant as well as a patent owner and the third parties may request to conduct an information research in order to determine the level of technology in comparison with which the assessment of patentability of invention may be conducted, after the information to grant a preliminary patent is published. Kazpatent has the right not to conduct an information research with respect to the objects that pursuant to paragraph 3 of Article 6 of this Law are not considered to be inventions and the person requesting to conduct an information research shall be notified on that. The procedure of such a research shall be determined by Kazpatent.

12. The applicant may familiarize himself/herself with all materials opposed by examination. Kazpatent shall send, within a month from the date of receipt of a request, copies of materials requested by the applicant

13. The terms stipulated in paragraphs 3, 5 - 10 of this Article and missed by an applicant may be renewed by Kazpatent in the presence of valid reasons and provision of the document on the payment to renew the missed term.

The request to renew the term may be filed by the applicant not later than twelve months from the date of expiration of the missed term. Such a request shall be filed to Kazpatent simultaneously with the materials required by examination or an objection submitted to the Appellate Council.

Article 23. Examination of application for utility model

1. In the course of formal examination of an application for a utility model, the presence of all required documents and execution of all the established requirements to them shall be checked, the date of filing of such application shall be established and the possibility to refer the claimed proposal to the objects protected as utility models as well as the unity of a utility model shall be checked.

The examination of the claimed utility model for compliance with the conditions of patentability stipulated in paragraph 1 of Article 7 of this Law shall not be conducted. The patent shall be granted under the risk and liability of the applicant

2. In the course of formal examination of an application for a utility model, the provisions contained in paragraphs 2 – 4 and 13 of Article 22 of the present Law shall be applied.

If in the result of formal examination it is established that the application is related to objects protected as utility models and the documents comply with the established requirements, the decision to grant a patent shall be made. .

The applicant shall file a document to Kazpatent proving a payment, within three months from the date the decision to issue a patent is sent to the applicant. In the event the indicated document is not submitted the application shall be deemed recalled and the registration of utility model as well as issuance of a patent shall not be conducted.

3. If in the result of formal examination it is established that the application is related to the objects that are not protected as utility models, the decision on refusal to grant a patent shall be made. The decision on refusal to grant a patent shall be also made if the applicant does not change the formula of a utility model after a notification that the suggested formula contains features that are absent in initial materials of the application or besides the object protected as utility model it also characterizes the proposal which is not related to objects protected as a utility model or which has not been examined due to violation of the requirement of the unity of a utility model.

The applicant may file an objection to Kazpatent on the decision to refuse to grant a patent, within three months from the date it was sent. The objection must be considered by the Appellate Council within two months from the date of the receipt.

4. At any stage of consideration of an application the applicant as well as a patent owner and third parties after the information to grant a patent is published may request to conduct an information research in order to determine the level of technology in comparison with which the assessment of patentability of a utility model may be conducted.. In this case the provisions of paragraph 11 of Article 22 of this Law shall be applied.

Article 24. Examination of application for industrial design

1. Kazpatent shall conduct formal examination and examination on essence of the application for an industrial design.

In the course of formal examination of an application for an industrial design, the provisions contained in paragraphs 1-6 and 13 of Article 22 of the present Law shall be applied.

2. For examination on essence, the provisions contained in paragraphs 7-10, 12 and 13 of Article 22 of this Law shall be applied.

Article 25. Registration of object of industrial property and issuance of protective document.

1. Kazpatent shall introduce to the State Registry of Inventions of the Republic of Kazakhstan, to the State Registry of Utility Models of the Republic of Kazakhstan or to the State Registry of Industrial Designs of the Republic of Kazakhstan the invention, utility model or industrial design.

2. Kazpatent shall grant a protective document together with publishing the information on its issuance in the bulletin. .

In the event there are several persons to whose name the protective document is requested, one document shall be issued for all of them.

3. Kazpatent shall issue an official certificate to the author of an industrial property object, who is not a patent owner, proving his authorship.

4. The authorized body shall establish the form of a protective document and the content of the information indicated therein.

Article 26. Publication of information on issuance of protective document.

1. Kazpatent shall publish in the bulletin the information on granting of preliminary patent for an invention or a patent for a utility model on the expiration of 18 months and on a preliminary patent for an industrial design – on the expiration of twelve months from the date of file of the application. Kazpatent may publish the information earlier than the indicated term, upon the request of the applicant.

2. Kazpatent shall publish in the bulletin the information on the issuance of a patent for an invention or an industrial design within two months from the date of the registration of an object of industrial property in the appropriate State Registry of the Republic of Kazakhstan.

3. The author shall have the right to refuse to be mentioned as such in the published information on the protective document.

4. Kazpatent shall determine the full composition of the published information.

5. After publication of an information on the granting of a protective document any person shall have the right to familiarize himself/herself/itself with the materials of an application,.
6. Kazpatent shall publish in the bulletin the information on extension of the validity term of a protective document, pursuant to paragraph 3 of Article 5 of the present Law.

Article 27. Recall of application.

The applicant shall have the right to recall the application prior to the registration of an industrial property object in the appropriate State Registry of the Republic of Kazakhstan.

Article 28. Change of applications.

1. The applicant shall have the right, prior to the decision on the application is made, to transform it into an application for a utility model by filing of an appropriate request.

In the event the decision on refusal to grant a protective document for invention is made, the applicant may transform this application into the application for a utility model, prior to the possibility to appeal the decision on refusal is exhausted. .

2. The transformation of an application for a utility model into an application for an invention is possible by filing an appropriate request prior to the decision on the application for a utility model is made.

3. In the event of indicated transformations, the priority and the date of filing of the first application shall be kept.

Chapter 6. Termination and renewal of validity of protective document

Article 29. Questioning of protective document

1. The protective document, within the whole term of its duration, may be questioned or deemed invalid in full or in part upon objection against its granting in the following cases:

- 1) incompliance of a protected object of industrial property with the conditions of patentability established by the present Law;
- 2) the presence of features in the formula of an invention, utility model or in the totality of essential features of an industrial design, that were absent in the initial materials of an application;
- 3) the issuance of a protective document in violation of the provisions of Article 37 of the present Law by the applicant;

4) incorrect identification of the name of the author (authors) or the patent owner in the protective document.

2. An objection to grant a protective document on the bases stipulated in subparagraphs 1) - 3) of paragraph 1 of this Article shall be filed to Kazpatent. The Appellate Council must consider an objection within six months from the date of its receipt. The person who filed such objection must inform the patent owner about the objection.

Article 30. Recognition of protective document invalid and premature termination of its duration

1. A protective document shall be deemed invalid in full or in part on the basis of the decision of the Appellate Council or the Court

2. The validity of a protective document shall be prematurely terminated:

1) on the basis of an application filed by the patent owner to Kazpatent, - from the date of publication of the information on premature termination of the duration term of a protective document;

2) in the event of non-payment in the established term for keeping the protective document valid - from the date of expiration of the established term of payment.

3. Kazpatent shall publish in the bulletin the information on protective documents that are considered invalid in full or in part as well as the effectiveness of which is prematurely terminated.

Article 31. Restoration of effectiveness of protective document.

Right of after use.

1. The duration of a patent terminated on the basis indicated in subparagraph 2) of paragraph 2 of Article 30 of this Law may be renewed upon the request of the patent owner within three years from the date of expiration of the term of payment in order to keep the protective document valid, in the presence of excusable reasons and provision of the document on the payment for restoration the duration of a patent.

Kazpatent shall publish in the bulletin the information on restoration of the validity of a protective document. The date of publication shall be considered the date of restoration of a protective document.

2. Any person, who during the period between the termination date and the date of renewal of the validity of a patent, has started using an object of industrial property protected by a patent or have made necessary preparations for it, shall retain the right for the future free-of-charge use without extension of a such use (the right of after use).

The right of after use may be transferred to other person only together with the production where the object of industrial property was used or the necessary preparations were made.

Chapter 7. Protection of rights of authors, applicants and patent owners.

Article 32. Appellate Council

1. The Appellate Council is a specialized structural subdivision of Kazpatent on prior-to-court review of disputes on objections submitted pursuant to paragraphs 6, 10 of Article 22, paragraph 3 of Article 23 and paragraph 2 of Article 29 of the present Law. The Authorized Body shall approve the Regulation on the Appellate Council, the Rules for submission and review of objections in the Appellate Council.
2. A submitted objection must be reviewed at the meeting of the board of the Appellate Council, within the term established by the present Law. The term for the review of an objection may be extended upon the application of a person who filed an objection as well as a patent owner, but not more than for six months from the date of expiration of the established term for review of an objection.
3. The decision of the Appellate Council may be appealed in the court by the person who filed an objection or by the patent owner, within six months from the date of the receipt of the decision.

Article 33. Consideration of disputes in court.

- 1) Disputes in respect of the following shall be considered in the court:
- 1) the authorship for an industrial property object;
 - 2) the legitimacy to grant a protective document;
 - 3) the establishment of a patent owner;
 - 4) granting of a compulsory license;
 - 5) the violation of the exclusive right to use a protected object of industrial property and other rights of property of a patent owner;
 - 6) the conclusion and execution of licensing agreements to use a protected object of industrial property;
 - 7) the right of prior use and after use;
 - 9) the payment of remuneration to the author by an employer, pursuant to paragraph 3 of Article 10 of the present Law;
 - 10) the payment of compensations stipulated by the present Law;
 - 11) other disputes related to the protection of rights arisen from a protective document.

2. On the basis of the decision of the court, Kazpatent shall conduct the publication of the information on changes related to the protective documents.

Article 34. Liability for violation of rights of the authors, applicants and patent owners

Appropriation of authorship, coercion into - joint-authorship, disclosure of the essence of an industrial property object without the consent of an author or an applicant, prior to the publication of information on it, illegal use of a protected object of industrial property, violation of the procedure of patenting of an industrial property object in foreign countries shall entail civil-legal, administrative and criminal liability, pursuant to the legislation.

Chapter 8. Closing provision

Article 35. Payment for actions of Kazpatent

Kazpatent shall charge a payment for the execution of legitimately important actions stipulated by the present Law, pursuant to the legislation.

Article 36. Patent agents

1. A citizen of the Republic of Kazakhstan who permanently domiciled in its territory, whose level of qualification complies with the claimed requirements may be a patent agent. The Authorized Body shall establish the qualification requirements to patent agents, the procedure of their certification and registration.

2. Natural persons who are domiciled outside the Republic of Kazakhstan or foreign legal persons shall conduct their business through patent agents registered at Kazpatent in order to obtain protective document, maintain its validity, submit objections to the Appellate Council and participate in their review.

Natural persons who permanently domiciled in the Republic of Kazakhstan, but who are temporarily located outside of its borders, may conduct their business related to the protective document without a patent agent by indicating the correspondence address within the borders of the Republic Kazakhstan.

3. The authority of a patent agent shall be attested by a proxy given to him/her by the applicant or the patent owner.

Article 37. Patenting of industrial property objects in foreign countries.

1. The file of an application in foreign countries for the object of industrial property created in the Republic of Kazakhstan may be effectuated after the expiration of three months from the date of submission of an application to Kazpatent or earlier - after examination of the information for the presence of a state secret, pursuant to the procedure established by the legislation.
2. Citizens of the Republic of Kazakhstan who live in its territory as well as legal persons of the Republic of Kazakhstan shall file an application to an international patent organization for the object of industrial property through Kazpatent, if this does not contradict the concerned international agreement.
3. In the event of submission of an application in foreign countries or an international patent organization for an industrial property object created in the Republic of Kazakhstan in violation of the procedure of the present Article, the protective document for such an industrial property object shall not be granted in the Republic of Kazakhstan.

Article 38. Rights of foreign natural persons, legal persons and stateless persons

1. Foreign natural persons and legal persons shall use the rights stipulated by the present Law on an equal basis with natural persons and legal persons of the Republic of Kazakhstan by virtue of international agreements ratified by the Republic of Kazakhstan and on the basis of reciprocity.
2. Stateless persons and who live in the Republic of Kazakhstan shall enjoy the rights stipulated by the present Law and other acts related to the legal protection of industrial property objects on an equal bases with natural persons and legal persons of the Republic of Kazakhstan, unless otherwise is stipulated in this Law and other legislative acts.

**President
of the Republic of Kazakhstan**